

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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AERO AG HOLDINGS, LLC,

Plaintiff,

-against-

21 CIVIL 9499 (VEC)(SLC)

JUDGMENT

HUGGOES FASHION LLC (D/B/A
AEROTHOTIC) AND MAHMOOD ALI,

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated September 26, 2022, after a careful review of the R&R, the parties' submissions and the record, the Court has overruled Aero's objections; the R&R is adopted in part and modified in part. Judge Cave recommends denying Plaintiff's Motion to Amend because it is futile in light of the lack of personal jurisdiction over Defendants Huggoes, Ali, and the proposed new Defendant, Aerosoft. R&R at 28. Aero objects, arguing that (1) Judge Cave "erroneously went against Second Circuit precedent" by concluding that exercising personal jurisdiction over Huggoes and Aerosoft would violate due process, and (2) that Judge Cave erroneously found that the Proposed Amended Complaint failed to allege personal jurisdiction over Ali pursuant to New York's long-arm statute. The Court has adopted Judge Cave's R&R in part; Aero's motion to amend the complaint is DENIED. The Court, however, has modified the R&R to the extent it recommends denying Defendants' motion to dismiss as moot. When faced with an amended complaint, a court may "either deny a pending motion to dismiss as moot or consider the merits of the motion, analyzing the facts as alleged in the amended pleading." *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303 (2d Cir. 2020)

(collecting cases). Because Judge Cave evaluated the motion to dismiss considering the facts alleged in the proposed amended complaint and recommended the Court find that Plaintiff failed to establish personal jurisdiction, a recommendation adopted by this Court, the Court has modified the R&R and has granted Defendants' Motion to Dismiss. This case is DISMISSED without prejudice for lack of personal jurisdiction over any Defendant.

Dated: New York, New York

September 27, 2022

RUBY J. KRAJICK

Clerk of Court

BY:

K. Mango

Deputy Clerk